IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-90

WESTERN SHOSHONE LEGAL DEFENSE AND EDUCATION ASSOCIATION, AND FRANK TEMOKE,
Petitioners,

v.

THE UNITED STATES OF AMERICA, AND THE WESTERN SHOSHONE IDENTIFIABLE GROUP, REPRESENTED BY THE TEMOAK BANDS OF WESTERN SHOSHONE INDIANS, NEVADA,
Respondents.

BRIEF IN OPPOSITION FOR RESPONDENT, THE WESTERN SHOSHONE IDENTIFIABLE GROUP

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Respondent, Western Shoshone Tribe or Identifiable Group, prays that the petition be dismissed as raising no special or important issues worthy of consideration by this Court, the unanimous decisions below being entirely consistent with established federal law governing tribal claims.

OPINIONS BELOW

The opinion of the Indian Claims Commission is reported at 35 Ind. Cl. Comm. 457 and is set forth at page 1a of the Appendix to the petition. The opinion of the

United States Court of Claims affirming the decision of the Indian Claims Commission is reported at 209 Ct. Cl. 43, 531 F.2d 495 (1976), and is reproduced at page 28a of the Appendix to the petition.[1]

JURISDICTION

Jurisdiction of this Court should properly have been invoked pursuant to the provisions of 28 U.S.C. § 1255 (1), not 23 U.S.C. § 1225(1) as stated in the petition.

QUESTION PRESENTED

Whether there was a denial of due process by refusal of the Indian Claims Commission to permit intervention by dissenting individual members of an identifiable Indian group (the "Identified Group") for the purpose of amending the claim of the Identified Group under the following factual circumstances:

1. The claim asserted is a tribal claim, not an aggregate of individual claims or a class action;

2. Intervention was sought immediately prior to entry of a final judgment of in excess of $26,000,000 in an aboriginal title land claim involving 24 million acres and after about 23 years of actual litigation by the Identifiable Group;[2]

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[1] An order dated April 23, 1976, in which the Court of Claims (six active judges) denied the petitioners' motion for rehearing *en banc*, is printed as an Appendix to this Brief in Opposition. All references to the Appendix of the petition will be "App." Citations to the Appendix of this Respondent's Brief will be "R.App."

[2] The sole purpose of intervention was to amend the tribal claim to exclude (and waive compensation for) an estimated 12 million acres of land (App. 30a). The land has never been precisely identified by petitioners, who contend Indian title has not been extinguished to large areas even though aboriginal possession no longer continues.

3. The claim (a) has been prosecuted, with full knowledge of and notice to the dissidents, for over thirty years under a contract of employment of counsel approved by and renewed by general membership meetings of the Identifiable Group, (b) has been asserted on behalf of the Group by a recognized organized constituent tribe, and (c) has been supervised by a Claims Committee elected by and representative of the general membership of the Group;

4. The dissidents have, over many years, despite repeated efforts, failed to convince the members of the Group in various general council meetings to adopt their litigation strategy to delete the several million acres of land or withdraw the claim; and

5. The only ground alleged below for intervention under Section 10 of the Indian Claims Commission Act is "collusion",[3] which the Indian Claims Commission found did not occur.[4]

STATUTE INVOLVED

"70i. Presentation of claims.

"Any claim within the provisions of this chapter may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having au-

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[3] Section 10 grants a recognized tribe the exclusive authority to represent the tribe, band or group, "unless fraud, collusion or laches on the part of such organization can be shown to the satisfaction of the Commission." 25 U.S.C. § 70(i).

[4] The Commission found the contentions on collusion "untenable" (App. 8a) and that instead of an alleged collusive agreement of the parties as to extinguishment of Indian title, as charged, the extinguishment had been found as a fact by the Indian Claims Commission in 1962 after full evidentiary hearings. (App. 9a-12a). The Court of Claims reached the same conclusion. (App. 29a).

thority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission." (Indian Claims Commission Act of Aug. 13, 1946, c. 959, § 10, 60 Stat. 1052, 25 U.S.C. § 70i.)

STATEMENT

On August 10, 1951, the Western Shoshone timely filed a petition in the Indian Claims Commission alleging, among other things, their aboriginal ownership or occupancy of certain lands in Nevada and California and also that title had been recognized by the Treaty of Ruby Valley of October 1, 1863 (18 Stat. 689) (App. 5a-6a).[5] The Identifiable Group also claimed that these lands had been disposed of by the United States to settlers or otherwise seized and converted to the use of the government without compensation or under circumstances that did not constitute fair and honorable dealings (App. 6a). The Western Shoshone sought just compensation for the taking of their land and the resulting loss of the use thereof. (App. 6a, 29a).

[5] Commencing in the early 1930's, the Western Shoshone had hired the late Milton A. Badt, subsequently Chief Justice of the Nevada Supreme Court, to seek jurisdictional legislation to permit assertion in the Court of Claims of claims for compensation for their ancestral land. *See, e.g.*, S. 2510, 74th Cong., 1st Sess. (1935) (a bill to authorize the Western Shoshone Indians to sue in the Court of Claims); H.R. 9035, 73d Cong., 2d Sess. (1934) (a bill for relief of the Western Shoshone Nation by conferring jurisdiction on the Court of Claims to hear and adjudicate certain claims and to pay compensation for the 1863 Treaty lands). *See also* S. 23, 78th Cong., 1st Sess. (1943); H.R. 4748, 77th Cong., 1st Sess. (1941); S. 12, 77th Cong., 1st Sess. (1941); S. 2670, 76th Cong., 1st Sess. (1939); S. 68, 75th Cong., 1st Sess. (1937). In the summer of 1947, a General Council of the Western Shoshone (including the Temoak Band) was held to approve an employment contract to authorize legal counsel to assert claims under the Indian Claims Commission Act, a purpose at direct variance with petitioners' present effort. Members of the dissident petitioning group were aware of these actions of the Identifiable Group at the time.

The Group's claim was initiated after full discussion with all interested Western Shoshone and pursuant to an attorney employment contract authorized by a general membership meeting of the entire Identifiable Group.[6] This meeting was widely publicized and was well attended by members of the Identifiable Group.

In its answer, the United States denied that the Western Shoshone had aboriginal or recognized title or that such title had been extinguished and, after a lengthy trial in 1957 on the title phase of the case was concluded, the Commission in 1962 unanimously determined (1) that the Western Shoshone aboriginally used, occupied and possessed a defined area of land and (2) that its title had been maintained until

> "by gradual encroachment by whites, settlers and others, and by the acquisition, disposition and taking of their lands by the United States for its own use and benefit, or the use and benefit by its citizens, the way of life of these Indians was disrupted and they were deprived of their lands." [7]

[6] The use of a general membership meeting, or "general council" as it is sometimes called, is a well-known and commonly used process and is specifically authorized by 25 C.F.R. § 72.8 (1975), which calls for selection of counsel by a "general council or meeting of the tribe." The petitioners are, and always have been, full members of the Identifiable Group and, therefore, have enjoyed numerous opportunities to present their political opinions regarding the handling of this case at the several general council meetings held on this matter. It should also be noted that the attorney employment contracts were signed by representatives of the entire Identifiable Group, not merely the Temoak Bands, and that a Claims Committee was elected by the entire Identifiable Group to oversee the litigation strategy adopted by the claims attorneys. These facts, in addition to the 25 years of delay in the filing of petitioners' motion to amend the petition, clearly distinguish the instant situation from the facts presented to the Court of Claims in *Turtle Mountain Band of Chippewa Indians* v. *United States*, 203 Ct. Cl. 426, 490 F.2d 935 (1974). This basic difference was correctly noted by the lower court. 531 F.2d at 504, n. 18 (App. 48a-49a).

[7] *Shoshone Tribe* v. *United States*, 11 Ind. Cl. Comm. 387, 416 (1962). *See* App. 10a-12a.

The Commission also determined in 1962 that the Temoak Bands of Western Shoshone Indians, suing on behalf of the entire Western Shoshone Identifiable Group, had been duly authorized and recognized by the Secretary of the Interior to maintain this suit on behalf of the entire group.[8]

After the 1962 decision of the Indian Claims Commission, general council meetings involving the entire Western Shoshone Identifiable Group were again held. At these widely publicized meetings, detailed reports were given to the Indians on the status and consequences of the pending claims at the Commission. After full discussion of this subject, the members of the Identifiable Group voted overwhelmingly to continue prosecution of the claims at the Commission and even to borrow thousands of dollars to finance certain expert witness testimony necessary to prove the value of certain surface and mineral rights.[9]

Subsequent to the 1967 trial on valuation, the Commission, in 1972, unanimously awarded the Identifiable Group $26,154,600 subject to allowable offsets.[10] After

[8] 11 Ind. Cl. Comm. at 388. It should be noted that during this trial, which lasted nearly two months, more than 530 exhibits (including books, maps, historical, anthropological and political documents) plus the detailed testimony of several expert witnesses were presented for the Commission's consideration.

[9] Affidavits of Arthur T. Manning and William McQueen, Chairman and Member of the Western Shoshone Claims Committee. (This respondent presented two affidavits as appendices 2 and 3 to its November 21, 1975 brief to the Court of Claims on the issue of collusion. These affidavits are hereinafter cited as Manning Affidavit or McQueen Affidavit.) Over the years, the dissenters repeatedly proposed seeking restoration of the land in lieu of the claim for compensation, and their proposal was rejected. Manning Affidavit, p. 2.

[10] *Western Shoshone Identifiable Group* v. *United States*, 29 Ind. Cl. Comm. 5, 58 (1972). The Nevada lands for which the Western Shoshone held aboriginal title were valued by the Commission as of

its motion for rehearing was denied in 1973,[11] the government filed its proposed offsets to the award. The offsets issues were tried and submitted to the Commission for its decision by March 5, 1974.[12]

Despite the fact that all of the foregoing proceedings and decisions were widely publicized and known to all members of the Western Shoshone Identifiable Group,[13] it was not until April 14, 1974 that the petitioners took any formal steps to intervene in this case. On that date (some 23 years after the original petition was filed and 12 years after the Commission had independently de-

July 1, 1872, pursuant to a stipulation entered into by the parties at the invitation of the Commission. *See* 35 Ind. Cl. Comm. at 469 (App. 12a-13a). It is this stipulation which formed the basis of petitioners' initial allegations below that the duly authorized representative of the Identifiable Group and the United States had "colluded" to treat the Western Shoshone land as "taken" by the government. However, this stipulation had nothing whatsoever to do with the issue of whether the Western Shoshone's property had been "taken" or title had been extinguished. Indeed, the Commission had already independently determined that such a taking and extinguishment of title had occurred, but was unable to "definitely set the date of acquisition of these lands by the United States" without further proof or stipulation. 11 Ind. Cl. Comm. at 416. Use of such a stipulated "average" date of taking for valuation purposes is not unique to this case. *See United States* v. *Pueblo of San Ildefonso*, 206 Ct. Cl. 649, 663-64, 513 F.2d 1383, 1391 (1975); *United States* v. *Northern Paiute Nation*, 203 Ct. Cl. 468, 473, 490 F.2d 954, 958 (1975). This procedure, utilizing an average date for valuing property taken by the United States in piecemeal fashion, has the express sanction of this Court. *See Creek Nation* v. *United States*, 302 U.S. 620, 622 (1938).

[11] *Western Shoshone Identifiable Group* v. *United States*, 29 Ind. Cl. Comm. 472 (1973).

[12] Although the Commission has been prepared to render its opinion on the offsets phase of the litigation for some time, its decision has been stayed solely because of the delay caused by petitioners' appeals.

[13] *See* Manning and McQueen Affidavits. The Court of Claims reviewed the full awareness of petitioners of developments in the case through its various steps (App. 35a-37a).

termined that Indian title had been extinguished) a small group of unauthorized individuals calling themselves the "United Western Shoshone Legal Defense and Education Association" and Frank Temoke, filed a motion to stay the proceedings and for leave to amend the 1951 petition so as to exclude approximately 12 million acres covered by the Commission's award. Their desire to amend the petition was based on the novel theory that, since Indian title had not been extinguished by a formal Act of Congress, the Identifiable Group still owns the lands in Nevada held aboriginally by the Western Shoshone.[14]

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[14] It should be noted that petitioners' theory goes directly contrary to the numerous holdings by this Court and the Court of Claims to the effect that Indian title is extinguished by loss of possession and that no Act of Congress is required. *See, e.g., Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272, 281-82 (1955); *United States* v. *Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 347 (1941); *Pillager Bands of Chippewa Indians* v. *United States*, 192 Ct. Cl. 698, 704, 428 F.2d 1274, 1277 (1970); *Sac & Fox Tribe of Indians* v. *United States*, 161 Ct. Cl. 189, 201-02, 315 F.2d 896, 903, *cert. denied*, 375 U.S. 921 (1963). There is no doubt that the land under question has been converted to grazing districts, school lands and national forests, all of which have been held to be dispositions extinguishing title. *See United States* v. *Pueblo of San Ildefonso*, 206 Ct. Cl. 649, 654, 513 F.2d 1383, 1386 (1975); *Tlingit & Haida* v. *United States*, 147 Ct. Cl. 315, 339-41 (1959); *Pueblo de Zia* v. *United States*, 19 Ind. Cl. Comm. 56, 74-79 (1968).

This Court has upheld a prior Court of Claims finding that the 1863 Shoshone treaties were treaties of peace and amity and not treaties of recognition or acknowledgement of Indian title by the United States. *Shoshone Indians* v. *United States*, 324 U.S. 340, 354 (1945). Motion to recall and amend the mandate denied. *Northwestern Bands of Shoshone* v. *United States*, 325 U.S. 840 (1945). (The Northwestern and Western treaties were two of five treaties negotiated by the United States at about the same time, with the same purpose and pursuant to the same authority and instructions.) In *Northwestern Shoshone Indians* v. *United States*, 95 Ct. Cl. 642, 676 (1942), the court, in rejecting a claim of recognition, said: "On the contrary, the United States has ever exercised dominion and complete ownership over the territory. . . ."

It is, therefore, not surprising to find that the Commission viewed petitioners' underlying legal theories totally void of merit.

In order to obtain standing to intervene in this action before the Commission, petitioners alleged that "collusion", as used in Section 10 of the Indian Claims Commission Act, had occurred between the authorized representative of the Identifiable Group and the government to treat the title to the lands as extinguished rather than as still held by the Indians.[15] Realizing that no collusion had ever occurred as this term has always been defined, petitioners argued that, for the purposes of the Indian Claims Commission Act, "collusion" should include *any* position taken by the duly authorized representative of the Identifiable Group with which the petitioners disagreed. The Commission, after hearing more than two hours of argument, concluded that petitioners' reading of Section 10 was faulty and that their contentions of collusion were totally unfounded as a matter of law.[16] Therefore, the Commission dismissed petitioners' untimely motion to stay the proceedings and amend the petition.

See 35 Ind. Cl. Comm. at 471-76 (App. 16a-21a). The Court of Claims also had grave misgivings about petitioners' substantive arguments. *Western Shoshone Legal Defense & Education Ass'n* v. *United States*, 531 F.2d at 503 (Ct. Cl. 1976) (App. 46a).

[15] *See* n. 3, *supra*.

[16] While petitioners argue that the Commission denied them an evidentiary hearing (Petition, at 6), in fact, both the Indian Claims Commission and the Court of Claims invited petitioners and gave them ample opportunity to show what the evidence would prove. The Commission treated the motion as equivalent to a motion for rehearing (App. 7a) and concluded that the petition was "unsupported by any data which would justify reopening or rehearing. . ." (App. 8a). The Court of Claims found on the "basis of the undisputed record and appellants' own proffers" that the Commission's conclusion that there was no collusion was a valid finding. (App. 38a-39a). It held that even if petitioners' proffers to the Commission were accepted at face value, they do not call for a change in conclusion (App. 40a, 49a). The Court of Claims held that the proffers made to the court were "too unsupported and too general to warrant a trial (or an evidentiary hearing)." (App. 49a).

Petitioners were given an additional opportunity in the Court of Claims to argue their strained interpretation of Section 10 of the Act and to demonstrate their ability to show the alleged "collusion". The Court of Claims affirmed the Commission's dismissal, holding generally that the terms of Section 10 should be given their ordinary meaning and connotation and specifically that the "determination of no collusion is inevitable under the record of this case." [17]

Petitioners' motion for rehearing *en banc* was reviewed by the court and was unanimously dismissed.[18]

ARGUMENT

Petitioners' attack upon the constitutionality of the long established procedure under the Indian Claims Commission Act does not raise any question of substance which merits consideration by this Court.[19] Petitioners' claim to a denial of due process is founded upon a misconception of the nature of a tribal claim, which they believe is similar to a class action under Rule 23 of the Federal Rules of Civil Procedure. As the Court of Claims correctly stated in its opinion: "A claim under the Claims Commission Act is not an aggregation of individual claims but a group claim on behalf of a tribe, band or other identifiable group." [20] Unlike tribal or group claims before the Commission, class actions are based on separable individual rights of the members of

[17] 531 F.2d at 501 (App. 40a). The court also summarily disposed of petitioners' new and totally unsubstantiated allegations of "fraud", allegations which had not been made to the Commission. 531 F.2d at 499-500 (App. 38a).

[18] R. App., *infra*.

[19] There is no similar case pending under the Act and no suggestion of judicial conflict.

[20] 531 F.2d at 503 (App. 47a).

the class. In contrast, no individual member of an Indian tribe or group possesses any property right in a claim dealing with the group's title to land, separable from the right of the entity.[21] Thus, petitioners' "Questions Presented" totally misstate what is involved in this case, since they are premised on the notion that individual members of the Identifiable Group possess "property interests" in the Group's claim. (*See Petition*, at 2-3).[22]

Indeed when separate individual rights of Indian claimants are at stake, the Court of Claims has insured that

[21] *See Prairie Band of Potawatomi Indians* v. *United States*, 143 Ct. Cl. 131, 143, 165 F. Supp. 139, 147 (1958). *See also Fort Sill Apache Tribe* v. *United States*, 201 Ct. Cl. 630, 634-35, 477 F.2d 1360, 1362 (1973), *cert. denied*, 416 U.S. 993 (1974); *Absentee Shawnee Tribe* v. *United States*, 165 Ct. Cl. 510, 514 (1964). As the Court of Claims has clearly pointed out in the past:

> "The unbroken rule of law from *Johnson* v. *M'Intosh*, 8 Wheat. 543, to date is that Indian title, unrecognized by the United States by treaty or patent, covers the right to use only. . . . This right to use the land is, however, the property of the band, tribe or nation of Indians that occupies the land, either by Indian title or a right of occupancy that is recognized by the United States by treaty. The individual's right to use depends upon tribal law or custom. The tribal right to use is communal. No instance is known of individual ownership of tribal lands." 143 Ct. Cl. at 143, 165 F. Supp. at 147.

[22] None of the representative or class action cases cited by petitioners is applicable to the present tribal claim proceeding, since individual members of the Group possess no separable, distinct property rights in the tribal land. *Eisen* v. *Carlisle & Jacquelin*, 417 U.S. 156 (1974), essentially involved this Court's construction of the language and meaning of Rule 23 notice requirements for class actions. In *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), reasonable notice and an opportunity for hearing were held to be prerequisites to any potential deprivation of separable property rights possessed by trust beneficiaries. Finally, this Court in *Hansberry* v. *Lee*, 311 U.S. 32, 42-43 (1940), merely recognized the binding effect of a judgment upon absent parties where they were adequately represented in a proceeding or where the various members' property interest was joint.

the absent parties' interests are adequately being represented in court. *See Quinault Allottees Ass'n* v. *United States*, 197 Ct. Cl. 134, 137, 453 F.2d 1272, 1275 (1972).

Petitioners misrepresent the opinion below when they assert that it was based on the doctrine of laches. Simply stated, the opinion by the Court of Claims involved a technical interpretation of statutory construction, the court correctly determining that, since petitioners had failed to demonstrate a contrary congressional intent, the words found in Section 10 of the Indian Claims Commission Act should be given their "ordinary connotation" and nothing more. *See* 531 F.2d at 501 (App. 42a). By adopting the normal meaning of the language of Section 10, as respects the word "collusion", the lower court merely followed this Court's oft-repeated maximum of statutory construction that "the words of statutes . . . should be interpreted where possible in their ordinary, everyday senses." *Malat* v. *Riddell*, 383 U.S. 569, 571 (1966). *See also Hanover Bank* v. *Commissioner*, 369 U.S. 672, 687-88 (1962); *Richards* v. *United States*, 369 U.S. 1, 9 (1962); *Crane* v. *Commissioner*, 331 U.S. 1, 6 (1947). Clearly, had the bar of laches truly been invoked against petitioners, the court would have had no reason to consider, as it did, the merits of petitioners' strained interpretation of the Act or its unsupportable allegations of "collusion" on the part of the duly authorized representative of the Western Shoshone Identifiable Group.[23]

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[23] The court's recognition of the inordinate delay in petitioners' attempt to intervene in this proceeding should be placed in its proper context. Its discussion in this regard related directly to whether the completion of the Identifiable Group's litigation should further be postponed by allowing petitioners a full trial on their unsupportable "collusion" allegations. The court concluded that:

> "[i]n view of this long and prejudicial delay, it is fair to insist that appellants buttress their allegations by more than self-serving generalities if they are to be accorded a trial." 531 F.2d at 502 (App. 43a-44a).

The third "question" presented in the petition is also faulty and deceptive when it states that "the delay cited is 23 years of efforts by claims counsel to achieve a different result than desired by the Indian beneficiaries." As demonstrated clearly by this respondent, both to the Indian Claims Commission and to the Court of Claims, this allegation not only misstates the facts but also makes little sense.

The 23 years of efforts and expenditure of thousands of dollars was by the Identifiable Group and under supervision of its Claims Committee and general council meetings. It was not a solo effort of counsel.

In its true perspective, petitioners' complaint in this case is that, although afforded numerous opportunities in the past, they have been unable to persuade a majority (or even close to a majority) of the Western Sho-

The Court of Claims understood that petitioners had been given ample notice and opportunity to attempt intervention at a much earlier date and that, in view of the worthlessness of petitioners' arguments, additional time expended on their frivolous claims would be a complete waste of judicial time and would cause enormous financial harm to the entire Identifiable Group. In this regard, the court pointed out that:

> "[F]urther delay in the termination of this proceeding may very likely cost the Western Shoshone Identifiable Group a very substantial sum of money since interest does not accrue on the award for the taking of Indian title until the amount is paid." 531 F.2d at 500, n. 10 (App. 38a), citing *United States* v. *Alcea Band of Tillamooks*, 341 U.S. 48 (1951).

The loss of interest to the Western Shoshone caused by the delay resulting from petitioners' frivolous motion to intervene has been estimated at $2,092,368 per year, $174,364 per month, or $5,812 per day. The Court was not unmindful that to "upset the apple cart" (App. 50a) and to send the Identifiable Group back to "start" with its valuation proceeding, by elimination of about 12 million acres from the claim, would cause it to start over again at the point it was in 1962, some 14 years ago.

shone Identifiable Group to follow their political conception of the proper method to handle the prosecution of the Group's litigation. Obviously, had petitioners been successful in their political attempts, they would have possessed the votes to direct the claims attorneys to follow a course of action different from that initially chosen by the Group prior to 1951 and ratified at various dates since that time. The failure by petitioners to obtain political power within the Identifiable Group is not an issue which merits consideration by this Court.

It should be remembered that petitioners' unfounded allegations have been carefully considered first by five members of the Indian Claims Commission and subsequently by six judges at the United States Court of Claims. Each of these individuals has substantial experience dealing with the technical aspects of Indian claims litigation. Consistent with ample case precedents both tribunals have correctly determined, *without dissent*, (1) that the language of Section 10 of the Act should be read to mean exactly what it says and (2) that petitioners' totally unsubstantiated allegations of "collusion" fail to show the reasonable requisites for their intervention in this claim by the Identifiable Group. The fact that petitioners disagree with the unanimous decisions against them is no valid reason for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

App. No. 3-75

WESTERN SHOSHONE LEGAL DEFENSE AND EDUCATION ASSOCIATION AND FRANK TEMOKE
Appellants

v.

THE UNITED STATES

and

THE WESTERN SHOSHONE IDENTIFIABLE GROUP, REPRESENTED BY THE TEMOAK BANDS OF WESTERN SHOSHONE INDIANS, NEVADA
Appellees

Before DAVIS, *Judge,* Presiding, SKELTON and KUNZIG, *Judges.*

ORDER

This case comes before the court on appellants' motion, filed March 8, 1976, for rehearing *en banc* pursuant to Rules 7(d) and 151(b). Upon consideration thereof, together with the response in opposition thereto, filed March 16, 1976, by the appellee, Western Shoshone Identifiable Group, without oral argument, by the six active Judges of the court (Judge Kashiwa not participating) as to the suggestion for rehearing *en banc* under Rule 7(d), which suggestion is denied, and further having been so considered by the panel listed above as to the motion for rehearing under Rule 151(b),

IT IS ORDERED that appellants' said motion for rehearing, filed March 8, 1976, be and the same is denied.

BY THE COURT

/s/ Oscar H. Davis
OSCAR H. DAVIS
Judge, Presiding

Apr. 23, 1976